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FM AMEMBASSY ANKARA
TO RUEHC/SECSTATE WASHDC 2935
INFO RUEHTA/AMEMBASSY ALMATY 2131
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SUBJECT: Turkish Council of State Rules Against Tupras
Privatization, but It May Be Too Late

REF: a) 05 Ankara 269, b) 05 Ankara 3258

This cable has been coordinated with Congen Istanbul.

11. (SBU) Summary: On February 2, the Council of State (Danistay) Administrative Court suspended the \$4.1 billion sale of a 51% share of state-owned oil refiner Tupras to a Koc Holding-Shell consortium, dealing a potential blow to Turkey's privatization program. Because the formal transfer of ownership was completed on January 26. It is unclear what, if any, practical impact the court's ruling will have. However, to some extent, the damage to Turkey's privatization process and future privatization revenues is likely already done. End Summary.

Administrative Court Rules Against Tupras Privatization

12. (SBU) In response to a lawsuit initiated by the Petrol-Is labor union, Turkey's administrative court, the Danistay, on February 2 issued an injunction against the privatization of Tupras, Turkey's sole oil refining company, which was announced with great fanfare in September. Although the written ruling has not yet been made public, rumored reasons for the decision include the exclusive supply agreement between Shell and Koc and the fact that the contract did not include the required investment and employment components.

Too Little Too Late?

13. (SBU) The practical impact of the injunction is unclear since the transfer of the 51% stake to the Koc-Shell group was completed on January 26, and the proceeds from the sale have already been deposited in Treasury accounts. Legal experts, PA officials, and a Koc spokesperson have told the press that the transfer

is practically irreversible. A source close to Koc told us the group's lawyers were astounded by the ruling and cannot imagine what "legal defects" the Danistay could have found in the transfer contract. There is precedent, including some privatization cases, for Danistay rulings to have no practical effect because the administrative actions were deemed irreversible. Furthermore, the Danistay chamber that issued the injunction is not the specialized chamber with jurisdiction over privatization cases.

¶4. (SBU) According to press reports, the PA has 30 days from the date it receives the official Court ruling to implement the decision. PA sources told us they have not yet received the official Court decision. The PA TUPRAS privatization group head pointed out that the court decision would, however, deter future investors in privatizations and thereby reduce GOT privatization revenues. The PA can appeal for another review by the Danistay.

Comment

¶5. (SBU) Trading in Tupras shares on the Istanbul stock exchange has been suspended since Thursday, but the broader exchange indices have taken the news in stride with only small corrections Thursday and Friday. The press, on the other hand, is playing up the story - several mainstream, non-financial newspapers featured the story on the front page. Whatever the final outcome, this Danistay ruling is a blow to the overall

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privatization process, as it could deter potential investors on Turkish privatizations.

WILSON